



**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

1190 St. Francis Drive, Room N2150

Post Office Box 26110

Santa Fe, New Mexico 87502

Telephone (505) 827-2425 Fax (505) 827-0310

Constituent Agencies

Environment Department
State Engineer & Interstate Stream Commission
Game and Fish Department
Oil Conservation Division
Department of Agriculture
State Parks Division
Soil and Water Conservation Commission
Bureau of Geology and Mineral Resources
Municipal/County Representative
Members -at Large

Minutes of the
New Mexico Water Quality
Control Commission Meeting
November 13, 2001

The New Mexico Water Quality Control Commission (WQCC) meeting was held on November 13, 2001, beginning at the State Capitol Building, Room 326, Corner of Paseo de Peralta and Don Gaspar, Santa Fe, New Mexico.

MEMBERS PRESENT:

Pete Maggiore	Chairman, New Mexico Environment Department
Pat Turney	State Engineer & Interstate Stream Commission
Julie Maitland	Department of Agriculture
David Johnson	State Parks Division
Howard Hutchinson	Soil and Water Conservation Commission
Lynn Brandvold	Bureau of Geology and Mineral Resources
Bill Olson	Oil Conservation Division
Steve Glass	City of Albuquerque - Municipal/County Representative
Larry Bell	Department of Game and Fish
Dr. Conrad Keyes	Member-at-Large
Irene Lee	Member-at-Large
Jack Westman	Member-at-Large

OTHERS PRESENT:

Dan Rubin	WQCC Counsel
Maria Voyles	WQCC Administrator
Bruce Thomson	UNM
Dr. Jim Davis	NMED/SWQB
Steven Pierce	NMED/SWQB
John Montgomery	NMED/SWQB
Marcy Leavitt	NMED/GWQB
David Hogge	NMED/SWQB

OTHERS PRESENT cont.

Sue Umshler	LRPA
Scott Cameron	Forest Guardians
Robert Mundy	private citizen
Pat Simpson	Attorney General's Office
Lynette Stevens	NMED/SWQB
Hoyt Pattison	private citizen
Kelly Bitner	private citizen
Jay Lazarus	private citizen
Peter Wilkinson	NM Dept. of Game and Fish
Harry Arquero	private citizen
Steve Veenis	private citizen

Item #1: Roll Call

Maria Voyles, WQCC Administrator, took roll.

Item #2: Approval of the Agenda

Chairman Maggiore called for a motion to move agenda items 7 and 9 up to between items 3 and 4. Commissioner Maitland so moved. Commissioner Olson seconded the motion. The motion passed unanimously.

Item #3 Approval of the minutes of the October 9-10, 2001, meeting.

Commissioner Johnson moved to approve the minutes as corrected. Commissioner Brandvold seconded the motion. The motion passed unanimously.

Item #4 (formerly Item #7) Action on NMED's petition to amend 20.6.2.7, 3106, 3108, 3109, 5003, and 5101 NMAC and request for hearing. (WQCC 01-17 R)

Marcy Leavitt appeared on behalf of the Ground Water Quality Bureau. Ms. Leavitt provided handouts and gave a presentation that was read into the record.

Commissioner Hutchinson moved to deny the petition. Commissioner Lee seconded the motion.

ROLL CALL VOTE: (yes = deny hearing / no = grant hearing)

Pete Maggiore	no
Pat Turney	no
Julie Maitland	yes
David Johnson	no
Howard Hutchinson	yes
Lynn Brandvold	no
Bill Olson	no
Steve Glass	no

ROLL CALL VOTE cont.

Larry Bell	not present for vote
Dr. Conrad Keyes	no
Irene Lee	yes
Jack Westman	yes

The motion to deny the hearing request failed with a vote of 7 to 4.

Commissioner Olson moved to approve the petition and set the hearing for January 8, 2002.
Commissioner Glass seconded the motion.

ROLL CALL VOTE: (yes = grant hearing / no = deny hearing)

Pete Maggiore	yes
Pat Turney	yes
Julie Maitland	no
David Johnson	yes
Howard Hutchinson	no
Lynn Brandvold	yes
Bill Olson	yes
Steve Glass	yes
Larry Bell	not present for vote
Dr. Conrad Keyes	yes
Irene Lee	no
Jack Westman	no

The motion to grant a hearing on the petition passed with a vote of 7 to 4.

Copies of the litigation and a letter from EPA Region 6 approving a limited exemption for agriculture and storm runoff discharges were provided to the Commissioners. A hearing officer will be appointed at the December 11, 2001 meeting.

Item #5 (formerly Item #9) Discussion of pending litigation between Forest Guardians and EPA.

Counselor Rubin recused himself from working on this matter with the Commission, as it could present a conflict with his new employer.

Commissioner Hutchinson had some questions regarding these elements of the suit Commission would be pursuing and he feels that these should be discussed during executive session. Commissioner Hutchinson moved to enter executive session, but then amended it to move the item to the end of the meeting. Commissioner Maitland seconded the motion.

Chairman Maggiore reiterated the motion to convene in executive session upon completion of the regularly scheduled agenda for the sole purpose of discussing potential strategy associated with intervention in the noted lawsuit.

Commissioner Hutchinson requested that Paul Ritzma, Counsel for NMED, be present during the discussion. Counselor Ritzma stated that he believes a vote is required to determine if the Commission would like the Department (NMED) to represent it in this matter prior to going into executive session.

A roll call vote was conducted.

Pete Maggiore	no
Pat Turney	no
Julie Maitland	no
David Johnson	yes
Howard Hutchinson	yes
Lynn Brandvold	no
Bill Olson	no
Steve Glass	yes
Larry Bell	not present for vote
Dr. Conrad Keyes	no
Irene Lee	yes
Jack Westman	no

The motion to go into executive session prior to identifying legal counsel failed 5 to 7.

Commissioner Hutchinson moved to intervene in the lawsuit (Defenders of Wildlife and Forest Guardians vs. the United States Environmental Protection Agency). Commissioner Brandvold seconded the motion. Commissioner Glass amended the motion to include "on behalf of the EPA position." Chairman Maggiore amended the motion to include "to appoint the NMED General Counsel Paul Ritzma to this case for the purposes of advising us in executive session."

The complete motion is "for the Commission to intervene in the lawsuit (Defenders of Wildlife and Forest Guardians vs. The United States Environmental Protection Agency) in support of EPA's position and to appoint the NMED General Counsel Paul Ritzma to this case for the purpose of advising the Commission in executive session." Commissioner Maitland seconded the motion.

A roll call vote was conducted.

Pete Maggiore	yes
Pat Turney	no
Julie Maitland	yes
David Johnson	no
Howard Hutchinson	yes
Lynn Brandvold	yes
Bill Olson	yes
Steve Glass	yes
Larry Bell	not present for vote
Dr. Conrad Keyes	yes

Irene Lee abstain
Jack Westman yes

The motion carried with a vote of 8 yes votes, 2 no votes and 1 abstention.

Item #6 Formal approval and adoption into the State’s Water Quality Management Plan of the fecal coliform TMDL for the Middle Rio Grande.

Dr. Jim Davis and David Hogge appeared on behalf of the Department. Mr. Hogge provided copies of the proposed TMDLs and gave a presentation that was read into the record.

Commissioner Westman asked whether, if a tribe changed a water quality standard, SWQB would automatically change the TMDL.

Mr. Hogge stated that if a tribe changed its standard, the TMDL would have to be modified to maintain the most stringent standard, whether it is the tribe's or the state's.

Commissioner Keyes had a question regarding figure 2, page 4 of the Middle Rio Grande TMDL for fecal coliform - Is the west edge of Sandia Pueblo east of the river in all stretches? Dr. Davis stated that his understanding is that the boundary of Sandia Pueblo is in the middle of the river and the waters are joint waters.

Commissioner Glass asked about the procedure for incorporating the TMDL into the Water Quality Management Plan (WQMP).

Dr. Davis stated that when the Commission approves a TMDL it automatically becomes an update of the Water Quality Management Plan (WQMP). Dr. Davis also stated that it has been a goal of the Surface Water Quality Bureau to produce a comprehensive update of the WQMP. The SWQB is close to producing a user-friendly WQMP that will include all of the TMDL documents. The WQMP will basically be an online document, but if necessary, hard copies can be provided.

Commissioner Glass commended the SWQB for convening the Middle Rio Grande water quality standards workgroup.

Dr. Davis stated that he feels that all the parties have a better understanding of each other and appreciation for each of their particular concerns, strengths and weaknesses.

Commissioner Johnson moved to formally adopt the TMDL as modified. Commissioner Brandvold seconded the motion. The motion passed unanimously.

Item #7 Formal approval and adoption into the State’s Water Quality Management Plan of the TMDLs for: Centerfire Creek (conductivity), Tularosa River (conductivity), San Francisco River (temperature), South Fork of Negrito Creek (temperature), Mogollon Creek (chronic aluminum), East Fork of the Gila River (chronic aluminum), Taylor Creek

(chronic aluminum), Taylor Creek (temperature), Black Canyon Creek (temperature) and Whitewater Creek (turbidity).

Dr. Jim Davis and David Hogge appeared on behalf of the Department. Mr. Hogge provided copies of the TMDLs and gave a presentation that was read into the record. Mr. Hogge stated that the Commission did not need to act on the de-listing letters.

Commissioner Hutchinson stated that he feels that the Department is spending a lot of money and they can not achieve the standards. He also would like to see segment specific standards.

Dr. Davis stated that the land management activities of the Forest Service have a great impact on the TMDLs in the small tributaries. The Department is working with the Forest Service.

Commissioner Westman stated that if the forest land is properly managed there should be an increase in the water yield.

Commissioner Keyes asked why the "critical" flow for the period of time that exceedances occurred was not used in the formulas, instead of using a mean flow.

Dr. Davis stated that TMDLs are calculated to be protective on a critical season basis, in other words, a worst case scenario. He also stated that the Department is looking into the purchase of remote weather stations in order to have more site-specific data.

Commissioner Glass moved to adopt the ten TMDLs for the Gila San Francisco Watershed into the Water Quality Management Plan. Commissioner Olson seconded the motion. The motion passed unanimously.

Item #8 Report from Surface Water Bureau regarding petition from Game and Fish Department to use piscicide to renovate the Costilla Creek.

Dr. Davis and Steven Pierce appeared on behalf of the Department. Mr. Pierce read the report into the record and copies were provided to the Commissioners at an earlier date. Mr. Pierce recommended that the Commission require a demonstration of the New Mexico Game and Fish Department that the registration for the piscicide use is current before the project commences.

Counselor Rubin stated that the next step would be for the Commission to set a hearing date within 90 days of the Department's report and assign a hearing officer.

Mr. Robert Mundy stated that he opposes the petition and was advised by the Commission to express his opposition during the hearing scheduled for January 9, 2002 in Taos, New Mexico.

Mr. Peter Wilkinson, Game and Fish, requested that the hearing be held in December.

Commissioner Brandvold moved to hold the hearing in Taos, New Mexico, that Felicia Orth be the hearing officer and that the Hearing Officer will set the date of the hearing in early January

and have the notice of hearing give the requirements for presenting technical testimony. Commissioner Johnson seconded the motion. The motion passed unanimously.

Item #9 Deliberation on hearing held on October 9-10, 2001, regarding mainstem Rio Grande Segment 2101 (now 20.6.4.101 NMAC). (continuation of the Triennial Review)

Commissioner Glass moved to accept the recommendation of the Department to maintain secondary contact recreation designated use, but adopting the more stringent primary contact fecal coliform standard for that reach. Commissioner Brandvold seconded the motion.

Commissioner Johnson was concerned about mixing up land management issues with water quality issues. He feels that irrespective of surface water quality standards, agencies involved in land management along the river can provide effective safety along the river through river usage policies.

Commissioner Westman had concerns about liability if water quality standards are viewed as encouraging swimming. Counselor Rubin stated that the State can not be sued unless the State allows it.

Commissioner Keyes stated that the New Mexico State Parks Division and the EBID only have contracts for a very small portion of this segment and the whole segment of the river is the responsibility of the Federal Government.

Commissioner Hutchinson was concerned with the possibility of establishing a low standard for “credible scientific data.”

Commissioner Johnson expressed concerns about disconnection between standards and use

Commissioner Glass stated that this is not changing the designation, just refusing to upgrade it.

A roll call vote was conducted.

Pete Maggiore	no
Pat Turney	yes
Julie Maitland	yes
David Johnson	no
Howard Hutchinson	yes
Lynn Brandvold	yes
Bill Olson	yes
Steve Glass	yes
Larry Bell	yes
Dr. Conrad Keyes	yes
Irene Lee	yes
Jack Westman	yes

The motion carried with a vote of ten yes votes to two no votes.

Counselor Rubin provided a draft statement of reasons.

The Commission discussed the possible removal, modification or amplification of the phrase "credible scientific data" from the draft statement of reasons. After a lengthy discussion, the Commission decided to not remove the phrase "credible scientific data" from the Statement of Reasons.

Commissioner Keyes moved to approve the Order and Statement of Reasons for Amendment of Standards as amended. Commissioner Westman seconded the motion. The motion passed. Commissioner Johnson voted no, to remain consistent with his previous votes.

Item #10 Other Business.

Counselor Rubin thanked the Commission for the opportunity to work with them. No replacement for Counselor Rubin has been appointed.

Item #11 Next Meeting.

The next meeting will be on December 11, 2001 in Santa Fe, NM. No location has been set at this time.

Dr. Davis informed the Commission that the SWQB would be asking for approval of several TMDLs at the next meeting.

Commissioner Maitland moved to enter executive session in order to discuss litigation strategy in the lawsuit between Forest Guardians and EPA. Commissioner Brandvold seconded the motion.

A roll call vote was conducted.

Pete Maggiore	yes
Pat Turney	yes
Julie Maitland	yes
David Johnson	yes
Howard Hutchinson	yes
Lynn Brandvold	yes
Bill Olson	yes
Steve Glass	yes
Larry Bell	yes
Dr. Conrad Keyes	yes
Irene Lee	yes
Jack Westman	yes

The Commission entered executive session.

Commissioner Hutchinson moved that the Commission return from executive session.
Commissioner Keyes seconded the motion.

A roll call vote was conducted.

Pete Maggiore	yes
Pat Turney	yes
Julie Maitland	yes
David Johnson	yes
Howard Hutchinson	yes
Lynn Brandvold	yes
Bill Olson	yes
Steve Glass	yes
Larry Bell	yes
Dr. Conrad Keyes	yes
Irene Lee	yes
Jack Westman	yes

The Commission returned to open session.

Chairman Maggiore stated for the record that the only matters discussed in executive session were those associated with litigation strategy with regard to the intervention by the Commission in the matter of Forest Guardians and Defenders of Wildlife vs. EPA and that the Commission have provided Paul Ritzma with guidance as to how the Commission wishes to be represented with respect to the intervention.

Chairman Maggiore moved to adjourn the meeting. Commissioner Maitland seconded the motion. The motion passed unanimously

Chairperson